



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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January 23, 2012

Robert A. Hamilton
NC Alcoholic Beverage
Control Commission
4307 Mail Service Center
Raleigh, NC 27699-4307

Re: 04 NCAC 02S .1008

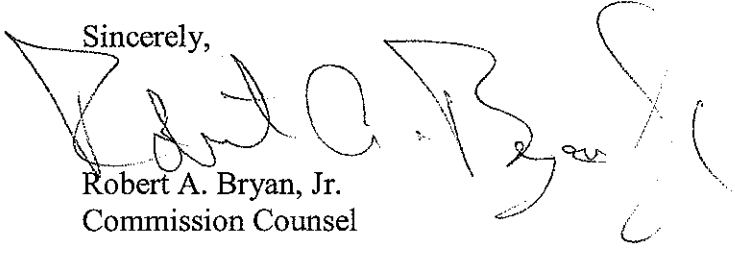
Dear Mr. Hamilton:

At its January 19, 2012 meeting the Rules Review Commission objected to the above-captioned rule based on ambiguity in accordance with G.S. 150B-21.10.

In Part (b)(1)(D), it is not clear what additional exceptions will be granted in the case of corporate names or franchise trade names. If this simply means that the use of corporate names or franchise trade names is allowed on all outside signage, the rule should say that. If it means something else, that is not clear.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,


Robert A. Bryan, Jr.
Commission Counsel

RAB:tdc

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04 NCAC 02S .1008 is amended as published in 26:06 496 through 497 as follows:

**04 NCAC 02S .1008 ADVERTISING OF MALT BEVERAGES, WINE AND MIXED BEVERAGES BY
RETAILERS**

(a) Interior Advertising.

- (1) Point-of-Sale. Retail malt beverage, wine and mixed beverage permittees may utilize any amount of point-of-sale advertising for malt beverage, wine and mixed beverage products offered for sale in the establishment. This advertising may be supplied by the industry member unless it constitutes a fixture or has value other than as advertising material; except that an industry member may give a retailer brand-identified items listed in 04 NCAC 02T .0713(c) for use as point-of-sale advertising;
- (2) Price Boards. Retail malt beverage, wine and mixed beverage permittees may display inside price boards showing the brand names and prices of malt beverage, wine and mixed beverage products offered for sale in the establishment;
- (3) Menus and Beverage Lists. Retail on-premise malt beverage, wine and mixed beverage permittees may place on the menu and beverage lists the brand names and prices of malt beverage, wine and mixed beverage products offered for sale in the establishment. Beverage lists may be supplied by an industry member and may include up to six items from the retailer's food menu but shall not include the name, logo or other identifier of the retail permittee on the advertisement. A table tent shall be considered a beverage list for purposes of this Rule;
- (4) Retailer Advertising Specialty Items. Retailer advertising specialty items are items such as trays, coasters, mats, meal checks, paper napkins, glassware, cups, foam scrapers, back bar mats, thermometers and other similar items that bear advertising matter. Advertising specialty items may be provided to a retailer by an industry member as provided in 04 NCAC 02T .0713(b)(8);
- (5) Window Displays. Retail malt beverage, wine and mixed beverage permittees may arrange unopened malt beverage, wine or spirituous liquor products in a window display;
- (6) Location. No point-of-sale advertising, advertising specialty item or price board shall be displayed in a manner designed or intended to advertise malt beverages, wine or mixed beverages on the outside of the establishment;
- (7) T-shirts. A retailer's employees shall not wear alcoholic beverage brand identified t-shirts while working on the retailer's licensed premises; and
- (8) Removal of Signs. A permittee shall remove any sign, display or advertisement in or about his licensed premises if the Commission finds it is contrary to public interest and orders its removal.

(b) Exterior Advertising.

- (1) Outside signs on the premises.
 - (A) Malt Beverages. Retail malt beverage permittees may display the term "beer" or "cold beer" or "draught beer" or "specialty beer" or "craft beer" or "North Carolina beer" or "local beer" or "imported beer" on a single, non-mechanical outside sign. This sign may be neon

1 illuminated. The letters and figures on the sign shall not be more than 5 inches in height and
2 2 inches apart and the sign shall be attached to the building on the licensed premises;
3 premises. Retail malt beverage permittees may also display the term "beer" or "cold beer" or
4 "draught beer" or "specialty beer" or "craft beer" or "North Carolina beer" or "local beer" or
5 "imported beer" or a substantially equivalent term on a single, portable, non-mechanical
6 sidewalk sign that is no larger than 25 inches by 45 inches on each of its two sides. The
7 sidewalk sign shall only be displayed during the hours of operation;

8 (B) Wine. Retail wine permittees may display the term "wine permit-off premise" or "wine
9 permit-on premise" or "fine wine" or a substantially equivalent term on a single
10 non-mechanical outside sign. This sign may be neon illuminated. The letters and figures on
11 the sign shall not be more than 5 inches in height and 2 inches apart and the sign shall be
12 attached to the building on the licensed premises. Instead of the sign described in this
13 Paragraph, retail wine permittees substantially engaged in off-premise sales of wine may
14 display the term "Wine Shop" or "Wine and Cheese" or a substantially equivalent term on a
15 single non-mechanical sign. This sign may be neon illuminated. The letters and figures on
16 the sign shall not be more than 18 inches in height and the sign shall be attached to the
17 building on the licensed premises; premises. Retail wine permittees may also display the term
18 "wine permit-off premise" or "wine permit-on premise" or "fine wine" or a substantially
19 equivalent term on a single, portable, non-mechanical sidewalk sign that is no larger than 25
20 inches by 45 inches on each of its two sides. Instead of the sidewalk sign described in this
21 Paragraph, retail wine permittees substantially engaged in off-premise sales of wine may
22 display the term "Wine Shop" or "Wine and Cheese" or "fine wine" or a substantially
23 equivalent term on a single, portable, non-mechanical sidewalk sign that is no larger than 25
24 inches by 45 inches on each of its two sides. A sidewalk sign shall only be displayed during
25 the hours of operation;

26 (C) Restriction. Retail malt beverage, wine and mixed beverage permittees shall not allow price
27 advertising or additional signs advertising malt beverages, wine and mixed beverages on the
28 outside of their premises. Outside signs alluding to malt beverages, wine or mixed beverages
29 by slang descriptions such as "brew," "suds," "six-pack," "vino" or "booze" are prohibited;

30 (D) Exceptions; Menus; Trade Names. The placement of a food menu that also contains a list of
31 alcoholic beverages by brand and price in a window or window, on the exterior of the
32 retailer's building or on a sidewalk sign that is no larger than 25 inches by 45 inches on each
33 of its two sides of a food menu that also contains a list of alcoholic beverages by brand and
34 price is not a violation of this Rule. A sidewalk sign shall only be displayed during the hours
35 of operation. Additional exceptions shall be granted by the Commission in the case of
36 corporate names or franchise trade names;

- 1 (E) Mixed Beverages. Retail mixed beverage permittees may display the term "mixed
2 beverages," "all ABC permits," "mixed drinks," "cocktails," or "spirits," on a single
3 non-mechanical, non-neon, or otherwise self-illuminated outside sign. The letters and figures
4 on the sign shall not be more than five inches in height and two inches apart and the sign
5 shall be attached to the building on the licensed premises; and
- 6 (F) Private Club. A private club shall not display any exterior sign advertising the availability of
7 malt beverages, wine or mixed beverages;
- 8 (2) Billboards. Retail permittees shall not advertise malt beverage, wine or mixed beverage products or
9 the availability of alcoholic beverages by means of a billboard or outdoor sign except as provided in
10 this Section. Industry members with retail permits may advertise tastings; and
- 11 (3) Aerial Displays. Retail permittees shall not advertise malt beverage, wine or mixed beverage products
12 or the availability of alcoholic beverages by means of an aerial display or an inflatable item that is
13 ~~tethered;~~ tethered; and
- 14 (4) Only exterior advertising permitted by local ordinances shall be authorized.
- 15 (c) Removal of Signs. A permittee shall remove any sign, display, or advertisement in or about his licensed premises if
16 the Commission finds it is contrary to public interest and orders its removal.
- 17 (d) Media Advertising. A retail malt beverage, wine or mixed beverage permittee may advertise price and brand of malt
18 beverage, wine and mixed beverage products offered for sale by means of circular, newspaper, magazine, radio,
19 television and internet.

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21 *History Note: Authority G.S. 18B-100; 18B-105; 18B-1116(b);*
22 *Eff. January 1, 1982;*
23 *Amended Eff. February 1, 2012; January 1, 2011; July 1, 1992; May 1, 1984.*